

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 05-199
)	(Enforcement)
CHAMPION ENVIRONMENTAL,)	
(a Wisconsin corporation))	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on November 8, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT, copies of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: s/ Javonna Homan
Javonna Homan
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

CERTIFICATE OF SERVICE

I hereby certify that I did on November 8, 2013, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT upon the persons listed on the Service List.

s/Javonna Homan
Javonna Homan
Assistant Attorney General

SERVICE LIST

Dominic Gorniak
Champion Environmental Services
1000 Apache Court
Ft. Atkinson, WI 53538

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

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COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

NOW COME, The PEOPLE by their attorney, LISA MADIGAN, moves this Honorable Board for the entry of an order granting the PEOPLE's Motion for Summary Judgment pursuant to the provisions of Section 101.516 of the Board's Rules, 35 Ill. Admin. Code 101.516, because the record, including pleadings, admissions on file, together with the affidavit, show that there is no genuine issue as to any material fact, and that the PEOPLE are entitled to judgment as a matter of law. In the alternative, granting the PEOPLE the requested Summary Judgment is in accord with Supreme Court Rules 191 and 192 and Section 2-1005 of the Code of Civil Procedure, 735 ILCS 5/2-1005 (2010). See also *IEPA v. IPCB*, 386 Ill. App.3d 375, 391 (2008) (the standard for summary judgment before the Board is the same as the standard in trial court). In support of their Motion for Summary Judgment the PEOPLE state as follows:

JURISDICTION

The Pollution Control Board is an independent board created by the legislature pursuant to Section 5 of the Environmental Protection Act, 415 ILCS 5/5 (2010), and charged *inter alia* with the duties and responsibilities of enforcing and administering the Act and associated regulations.

Pursuant to Section 5(d) of the Act, 415 ILCS 5/5(d) (2010), the Board has jurisdiction and authority to conduct proceedings upon this instant Complaint which alleges Respondent has violated the Act and associated regulations.

SUMMARY JUDGMENT AUTHORITY

The Legislature has granted the Board the authority to adopt procedural rules for resolution of actions by summary judgment prior to hearing upon motion by either party (415 ILCS 5/26 (2010)) and this matter should be resolved by granting Complainant's Motion for Summary Judgment.

The Board has adopted procedural rules in 35 Ill. Adm. Code 101.516 which provide for resolution of this instant matter by summary judgment prior to hearing, stating in pertinent part:

b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board "will" [*emphasis added*] enter summary judgment.

Our Supreme Court has stated the purpose of summary judgment is to determine whether a genuine issue of material fact exists, not to try a question of fact. *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill.2d 294, 305, 297 Ill.Dec. 319, 837 N.E.2d 99 (2005). Summary judgment is proper where the pleadings, depositions, admissions, and affidavits on file reveal that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* Plaintiffs are not required to prove their case at the summary judgment stage. *Id.* at 306, 297 Ill.Dec. 319, 837 N.E.2d 99. Summary judgment should be granted only when the right of the moving party is clear and free from doubt. *Id.* In this instant matter there are no genuine issues of material facts and the PEOPLE are entitled to judgment as a matter of law. Pursuant to Section 101.516 of the Board's regulations, 35 Ill. Adm.

Code 101.516, the Board should enter an order granting the PEOPLE's Motion for Summary Judgment.

PROCEDURAL HISTORY

On May 23, 2005, a Complaint was filed before this Honorable Board on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion.

Notice of Electronic Filing and the Complaint were properly served on Respondent. Respondent's attorney, Jennifer Nijman entered an appearance on June 30, 2005. The Respondent answered on August 22, 2005, generally denying all allegations in the Complaint. On September 1, 2005, a status conference was held in which Respondent's attorney Jennifer Nijman participated. Respondent filed a motion to finalize settlement agreement on September 2, 2008, which was denied on October 16, 2008. On June 16, 2011, Jennifer Nijman withdrew as counsel. No other attorney has entered an appearance. On August 19, 2011, the documents sent by the Board to Champion were returned to sender. Complainant has had no contact with any new attorney for the Respondent, and has not spoken with any representative of Respondent within the past year. Respondent has not participated in any telephonic conferences since the withdrawal of counsel. On September 6, 2013, a Request for Admission of Fact and Genuineness of Documents was mailed to the Respondent's agent. To date, no response has been received.

STATEMENT UNDISPUTED OF FACTS

At the time of the allegations alleged in the Complaint, Respondent Champion was conducting an asbestos abatement prior to demolition of a building in East Moline known as the former Case Manufacturing Facility, 1100 Third Street, East Moline, Rock Island County,

Illinois (the "site"). Champion was to remove approximately 15,000 linear feet of regulated asbestos containing material, 10,000 square feet of Category I non-friable asbestos containing material, and 2,010,000 square feet of Category II non-friable ACM prior to demolition of the facility. Please see Exhibit 1 Attachment A.

A Request for Admission of Fact and Genuineness of Documents was mailed to the Respondent on September 6, 2013. To date there has been no response. Therefore, those Requests will be deemed admitted. The Respondent has admitted to operating an asbestos renovation and demolition at the former Case manufacturing facility, 1100 Third Street, East Moline, Rock Island County, Illinois. On site asbestos removal was being conducted by Respondent there in 2005. A notice of Asbestos Removal was received by Illinois EPA from Champion on February 14, 2005. During May, 2005, Champion was engaged in removal of asbestos from that site. On May 5, 2005, an IEPA inspector inspected the site. During that inspection, employees of Champion struck transite panels with crowbars and hammers, pried transite panels from the structure, ran over some pieces of transite with machinery, and dropped transite panels from various heights. On that date, regulated asbestos-containing wastes and asbestos containing waste material were not wetted. Respondent admitted to allowing asbestos containing waste materials to be dumped on the ground at the site. The inspector took photographs at the time, and those were attached to the Request for Admission of Fact and Genuineness of Documents. On September 28, 2005, the Illinois EPA reinspected the property. Regulated asbestos containing materials and asbestos containing waste material was observed in a dumpster. The inspector took photographs at that time also, and those were attached to the Request for Admission of Fact and Genuineness of Documents.

According to the admissions made by the Respondent in the Request for Admission of Fact and Genuineness of Documents, the property was reinspected on March 1, 2006, by the Illinois EPA. Regulated asbestos-containing material and asbestos containing waste material on the site was observed to be inadequately wetted. The Respondent was ordered to pay a penalty of \$25,000, in connection with PCB 1997-135, and \$2,500, in connection with PCB 2010-008. The Respondent does not hold a permit for a sanitary landfill at the site. Copies of the various inspection reports and photographs were also attached to the Request for Admission of Fact and Genuineness of Documents (for May 5, 2005, September 28, 2005, and March 1, 2006) as well as copies of the Notice and the two IPCB orders (1997-135 and 2010-008). Please see Exhibit 1, Request for Admission of Fact and Genuineness of Documents, and Exhibit 2, Affidavit of Dennis Hancock.

The Respondent caused visible emissions from the site as described and depicted in Exhibit 2, Affidavit of Dennis Hancock, specifically Exhibit B, Inspection Report of May 5, 2005, with attached photographs. For some period prior to May 5, 2005, the Respondent mishandled RACM and ACWM at the site as described and depicted in Exhibit 2, Affidavit of Dennis Hancock, specifically Attachment B, Inspection Report of May 5, 2005, with attached photographs. Specifically, the RACM and ACWM was mishandled by being struck with crowbars and hammers, pried from the structure, dropped from various heights, and being run over by machinery.

The Respondent caused or allowed open dumping of wastes, including RACM and ACWM, as described and depicted in Exhibit 2, Affidavit of Dennis Hancock, specifically Attachment B, Inspection Report of May 5, 2005, with attached photographs.

On September 28, 2005, the site was inspected. During that inspection, broken transite panels were observed in a 30 yard dumpster. Additional asbestos containing waste material was seen on the floor. The asbestos survey was not available on site for review at that time. Please see Exhibit 2, Affidavit of Dennis Hancock, specifically Attachment C, Inspection Report of September 28, 2005, with attached photographs.

On March 1, 2006, the site was inspected. During that inspection, the asbestos containing material being removed was not wetted until the inspector arrived on the site. There was no protective sheeting on the floor during the work, and some broken material was noted in the area designated as already cleaned. Please see Exhibit 2, Affidavit of Dennis Hancock, specifically Attachment D, Inspection Report of March 1, 2006, with attached photographs. The abatement has been concluded, and the structure has been demolished.

At all times relevant to the Complaint, Champion was the operator of the site.

ALLEGATIONS OF NON-COMPLIANCE

The Complainant alleges that the following violations of the NESHAP, the Act, and the regulations have been committed by the Respondent at the site during the relevant time periods, as noted in the attached Affidavit, inspection reports, and the Complaint:

COUNT I

- By failing to properly remove Category II nonfriable ACM from the facility and thereby ensure that such materials would not become crumbled, pulverized, or reduced to powder during demolition, on or about May 5, 2005, in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d)(2010) and 40 CFR 61.145(c)(1), Respondent violated the National Emissions Standards for Asbestos.

- By failing to adequately wet and keep wet all RACM removed during renovation operations until collected and contained in leak-tight wrapping in preparations for disposal, on or about May 5, 2005, and March 1, 2006, in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d)(2010) and 40 CFR 61.145(c)(6), the Respondent has violated the NESHAP for Asbestos.
- By failing to deposit as soon as practicable all RACM and asbestos containing waste material at a site permitted to accept such waste, in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) and 40 CFR 61.150(b)(1), on or about May 5, 2005, September 28, 2005, and March 1, 2006, the Respondent has violated the NESHAP for asbestos.
- By failing to collect, contain and deposit as soon as practicable all RACM and asbestos-containing waste materials generated during the removal at a site permitted to accept such waste, on or about May 5, 2005, September 28, 2005, and March 1, 2006, in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d)(2010), 40 CFR 61.145(c)(6) and 40 CFR 61.150(b)(1).

COUNT II

- By causing or allowing visible emissions from asbestos-containing waste materials on or about May 5, 2005, the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2010) and 40 CFR 61.150(a).
- By causing, threatening or allowing the discharge or emission of dry friable asbestos, a contaminant and hazardous air pollutant, into the environment so as to tend to cause air pollution on or about May 5, 2005, the Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2010) and 35 Ill. Adm. Code 201.141.

COUNT III

- By causing or allowing open dumping of refuse and wastes, and by disposing or abandoning wastes at a site that does not meet the requirements of the Act and the regulations and standards thereunder on or about May 5, 2005, and March 1, 2006, the Respondent, Champion, has violated Sections 21(a) and (e) of the Act, 415 ILCS 5/21(a)(e)(2010).
- By causing or allowing open dumping of waste in a manner that resulted in litter on or about May 5, 2005, and March 1, 2006, the Respondent violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2010).

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the People;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, Complainant states the following:

1. Human health and the environment were threatened and the Illinois EPA's responsibilities hindered by the Respondent's violations and by any emissions of asbestos.

2. There was social and economic benefit to the demolition of the facility but only if the abatement activity was done properly.
3. Removal of asbestos containing materials from the facility was suitable for the area in which it was located only if done properly.
4. Reducing or eliminating emissions and deposits was both technically practicable and economically reasonable.
5. The Respondent's violations diminished over time and the completion of the demolition has eliminated the opportunity for additional violations .

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
7. whether the respondent has agreed to undertake

a supplemental environmental project, which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and

8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these afore-mentioned factors, the Complainant states as follows:

1. The Complainant alleges that the Respondent failed to properly conduct asbestos removal operations at the site beginning on or around May 5, 2005. The Illinois EPA reinspected the facility on May 11, 2005, and determined that the removal and disposal activities at the site were in compliance with applicable laws and regulations at that time. Some additional violations were noted in the later inspections. There are no ongoing violations as the facility in question has been completely demolished.
2. Respondent represented that it was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, after the Illinois EPA notified it of noncompliance. However, Respondent's lack of participation in this proceeding shows lack of due diligence.
3. Respondent gained some nominal economic benefit by not using proper and approved method for asbestos removal; however, the civil penalty amount sought exceeds any such benefit that may have been enjoyed by Respondent.
4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of thirty four thousand dollars (\$34,00.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent Champion, has committed previous violations of the Act, previously adjudicated in PCB 1997-135, which related to an alleged improper notification of asbestos removal and was resolved by settlement and stipulation.
6. Self-disclosure is not at issue in this matter.
7. A supplemental environmental project is not an issue in this matter.

ARGUMENT

Based upon the affidavit, inspection reports, and filings and the fact that the Respondent remains without counsel some two years after withdrawal of previous counsel, there are no genuine issues of material fact in this instant matter and PEOPLE are entitled to judgment as a matter of law. Pursuant to the provisions of Section 101.516 of this Honorable Board's regulations, 35 Ill. Admin. Code 101.516, an order granting summary judgment in the PEOPLE's favor is proper.

It is undisputed that Respondent did not properly remove Category II nonfriable ACM, caused or allowed those materials to become crumbled, pulverized, or reduced to powder during demolition activities at the site. The Respondent did not adequately wet and keep wet all RACM removed during renovation until collected and contained in leak-tight wrapping in preparation for disposal. The Respondent failed to deposit as soon as practicable all RACM and asbestos containing waste material at a site permitted to accept such wastes. The Respondent failed to collect, contain and deposit as soon as practicable all RACM and asbestos containing waste materials generated during the removal at a site permitted to accept such wastes. The Respondent caused or allowed open dumping of asbestos containing wastes at the site, and caused or allowed visible emissions of asbestos containing wastes from the site. These actions of the Respondent have violated the NESHAP, the Act, and the affiliated regulations.

Given the Respondent's historical violations and fully considering the factors enumerated in Sections 33(c) and 42(h) of the Act, 415 ILCS 5/33(c) and 42(h) (2010) the relief requested in the Complaint and imposition of a thirty four thousand dollar (\$34,000.00) penalty is appropriate to protect the public and deter the Respondent from future violations of the Act. That amount is consistent with penalties imposed for comparable violations.

WHEREFORE, the PEOPLE pray that this Honorable Board grant their Motion in the PEOPLES favor and against Respondent CHAMPION ENVIRONMENTAL in accordance with the provisions of Section 101.516 of the Board's regulations, 35 Ill. Adm. Code 101.516, granting the relief requested in the Complaint and imposing a penalty of thirty four thousand dollars (\$34,000.00) for the violations alleged in the Complaint, to be paid within 30 days of entry of the Board's Order and paid in accordance with Section 103.504 of the Board's regulations 35 Ill. Admin. Code Section 103.504. In the alternative, the People request that the Board grant the Motion for Summary Judgment in favor of the People and against the Respondent Champion as there remain no outstanding issues of material fact and the People are entitled to judgment. People request imposition of a penalty of thirty four thousand dollars

(\$34,000) for the violations alleged in the Complaint, to be paid within 30 days of the entry of the Board's Order and paid as set out above.

Respectfully Submitted,

Illinois Environmental Protection Agency
Ex rel. LISA MADIGAN,
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

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By: s/Javonnna Homan
JAVONNA HOMAN
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